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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/730,639	12/08/2003	Gary Sherrell	2230-1-3	2949
996 7590 06/06/2007 GRAYBEAL, JACKSON, HALEY LLP 155 - 108TH AVENUE NE SUITE 350 BELLEVUE, WA 98004-5901			EXAMINER MAI, TRI M	
			ART UNIT 3781	PAPER NUMBER
			MAIL DATE 06/06/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/730,639

Applicant(s)

SHERRELL ET AL.

Examiner

Tri M. Mai

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3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 7-12 and 14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 7-12 and 14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>07/06/04</u> . | 6) <input type="checkbox"/> Other: ____  |

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1. Claims 1-6, 13, and 15-16 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention as previously set forth.
2. Claims 7, 9, 12, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Latshaw (6164425), or in the alternative, under 35 U.S.C. 103(a) as being unpatentable over Latshaw in view of anyone of Watson (2890061), Metten (6997274), or Wright (2668721). Latshaw teaches a travel case having two edge wheels 31, 32, a handle 43, an extendable support and a wheel end to a side of the travel case, and caster wheel.

Latshaw meets all claimed limitations except for the one side being greater than 40 inches. It would have been obvious to one of ordinary skill in the art to provide the case of Latshaw being greater than 40 inches to provide the desired size for the container.

With respect to the horizontal position of being less than 40 degrees, it would have been obvious to one of ordinary skill in the art to provide the angle of about 40 degrees to provide the desired angle for holding the case.

Furthermore, it is noted that the case in Latshaw is capable of the being support from a horizontal position less than 40 degrees, i.e., when one transport the case via the handle 43 via only the wheels 52 and 53 without using the wheels 32 and 37, the bag can be transported at different angles including the claimed angle as claimed.

In the alternative, anyone of Watson, Metten, and Wright teaches that it is known in the art to provide a carrier being positioned at a small angle (about 30 degrees) with respect to the surface. It would have been obvious to one of ordinary skill in the art to provide have the case in Latshaw to be positioned at an angle less than 40 degrees would have been obvious to provide the desired angle for towing the case.

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3. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over the Latshaw rejection, as set forth above, and further in view of Tiramani (6497311). It would have been obvious to one of ordinary skill in the art to make the device from either soft or hard as taught by Tiramani, col. 2, ln. 53-55) to provide the desired material for the luggage.
4. Claims 10-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lawshaw rejection, as set forth above in paragraph 7, and further in view of Kuo (6182981). It would have been obvious to one of ordinary skill in the art to provide caster wheels with pivot axis to enable one to control the luggage easily.
5. Claims 7, 9, 12, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scoglio (6634496) in view of Liang (5873439), and further in view of either Wright or Metten. Scoglio teaches luggage having wheels at 30, a handle at 40. It would have been obvious to one of ordinary skill in the art to provide a support as taught by Liang to enable one to support the device in a tilt angle easily. Note that the device in Liang can support various angles as portion 30 is slidably adjustable along portion 71. With respect to the size of the case, it would have been obvious to one of ordinary skill in the art to provide the case of Scoglio being greater than 40 inches to provide the desired size for the container.

With respect to the handle, the handle is on one of the top surfaces as claimed.

Furthermore, note that the handle meets the claimed limitation when it is retracted.

In the alternative, either Metten or Wright teaches that it is known in the art to provide a carrier being positioned at a small angle (about 30 degrees) with respect to the surface. It would have been obvious to one of ordinary skill in the art to provide the modified case of Scoglio

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in to be positioned at an angle less than 40 degrees would have been obvious to provide the desired angle for towing the case.

6. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over the Scoglio rejection, as set forth above, and further in view of Tiramani (6497311). It would have been obvious to one of ordinary skill in the art to make the device from either soft or hard as taught by Tiramani, col. 2, ln. 53-55) to provide the desire material for the luggage.

7. Claims 10-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scoglio rejection, as set forth above in paragraph 5, and further in view of Liang (6082510). It would have been obvious to one of ordinary skill in the art to provide caster wheels with pivot axis, note fig. 6 to enable one to control the luggage easily.

8. Applicant's arguments have been fully considered but they are not persuasive. Applicant asserts that the combination was not prima facie and that there is no suggestion or motivation for the combination.

As set forth above, it is noted that the case in Latshaw is capable of the being support from a horizontal position less than 40 degrees, i.e., when one transport the case via the handle 43 via only the wheels 52 and 53 without using the wheels 32 and 37, the bag can be transported at different angles including the claimed angle as claimed.

Furthermore, in the alternative the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347,

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21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the modification involve a mere changing the size of the case. A change in size/proportion is generally recognized as being within the level of ordinary skill in the art. ( see In re Rose, 105 USPQ 237 (CCPA 1955), and In re Tanczyn, 44 CCPA 704, 766, 241). With respect to the angle of less than 40 degrees, the modification involve a mere changing the proportion of the case with respect to the support, and this change of proportion is also generally recognized as being within the level of ordinary skill in the art.

A plurality of cited prior arts showing that golf cart devices can be made to be support at various angles. Note that in each of Watson (2890031), Metten (6997274) and Wright (2668721), each shows the golf device being angled about 35 degrees. Thus, the suggestion for modifying the angle of 40 degrees or less is clearly suggested by the prior art.


Similar to that of Scoglio in view of Liang, applicant asserts that there is no suggestion to provide the wheels at an angle 40 degrees or less. The examiner submits that in Liang, the support is slidable/adjustable about hole 31 and thus it is capable of supporting the luggage at the claimed angle. Furthermore, as set forth above, A change in this angle proportion is generally recognized as being within the level of ordinary skill in the art. ( see In re Rose, 105 USPQ 237 (CCPA 1955), and In re Tanczyn, 44 CCPA 704, 766, 241).

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (571)272-4541. The examiner can normally be reached on 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571)272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Tri M. Mai   
Primary Examiner  
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